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13

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 BYRON CHAPMAN,) **CASE NO.**
17 Plaintiff,) **Civil Rights**
18 v.) **COMPLAINT FOR INJUNCTIVE RELIEF**
19 Giovanni's Pizza; Jerry Van Wingerden;) **AND DAMAGES:**
20 Beverly Van Wingerden,) **1st CAUSE OF ACTION:** For Denial of Access
21 Defendants,) by a Public Accommodation in Violation of the
22) Americans with Disabilities Act of 1990 (42
23) U.S.C. §12101, *et seq.*)
24) **2nd CAUSE OF ACTION:** For Denial of Full
25) and Equal Access in Violation of California
26) Civil Code §§54, 54.1 and 54.3
27) **3rd CAUSE OF ACTION:** For Denial of
28) Accessible Sanitary Facilities in Violation of
California Health & Safety Code §19955, *et seq.*
4th CAUSE OF ACTION: For Denial of
Access to Full and Equal Accommodations,
Advantages, Facilities, Privileges and/or
Services in Violation of California Civil Code
§51, *et seq.* (The Unruh Civil Rights Act)

DEMAND FOR JURY

1 Plaintiff BYRON CHAPMAN, complains of defendants Jerry Van Wingerden; Beverly
2 Van Wingerden and alleges as follows:

3 **INTRODUCTION:**

4 1. This is a civil rights action for discrimination against persons with physical
5 disabilities, of which class plaintiff BYRON CHAPMAN and the disability community are
6 members, including but not limited to 4A4U, for failure to remove architectural barriers
7 structural in nature at defendants' Giovanni's Pizza, a place of public accommodation, thereby
8 discriminatorily denying plaintiff and the class of other similarly situated persons with physical
9 disabilities access to, the full and equal enjoyment of, opportunity to participate in, and benefit
10 from, the goods, facilities, services, and accommodations thereof. Plaintiff seeks injunctive
11 relief and damages pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12101,
12 *et seq.*; California Civil Code §§51, 51.5 and 54, *et seq.*; and California Health & Safety Code
13 §19955, *et seq.*

14 2. Plaintiff brings this action acting as a "private attorney general" privatizing
15 enforcement of the American with Disabilities Act of 1990 ("ADA") without the American tax
16 payer(s) bearing the financial tax burden for such action.

17 3. Plaintiff is a person with physical disabilities who, on or about December 15,
18 2016, May 25, 2017 and May 24, 2018 (and **deterred** thereafter), was an invitee, guest, patron,
19 customer at defendants' Giovanni's Pizza, in the City of Carpinteria, California. At said time(s)
20 and place, defendants failed to provide proper legal access to the pizza store, which is a "public
21 accommodation" and/or a "public facility" including, but not limited to accessible routes,
22 parking, parking signage, service counter, men and women restrooms. The denial of access was
23 in violation of both federal and California legal requirements, and plaintiff suffered violation of
24 his civil rights to full and equal access, and was embarrassed and humiliated.

25 **JURISDICTION AND VENUE:**

26 4. **Jurisdiction:** This Court has jurisdiction of this action pursuant to 28 U.S.C.
27 §1331 for violations of the Americans with Disabilities Act of 1990, 42 U.S.C. §12101, *et seq.*
28 Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same

nucleus of operative facts and arising out of the same transactions, are also brought under parallel California law, whose goals are closely tied with the ADA, including but not limited to violations of California Civil Code §51, *et seq.* and §54, *et seq.*, California Health & Safety Code §19955 *et seq.*, including §19959; and California Building Code.

5. **Venue:** Venue is proper in this court pursuant to 28 U.S.C. §1391(b) and is founded on the facts that the real property which is the subject of this action is located at/near 5003 Carpinteria, in the City of Carpinteria, County of Santa Barbara, State of California, and that plaintiff's causes of action arose in this county.

PARTIES:

6. Plaintiff BYRON CHAPMAN is a "physically handicapped person," a "physically disabled person," and a "person with physical disabilities" (hereinafter the terms "physically disabled", "physically handicapped" and "person with physical disabilities" are used interchangeably, as these words have similar or identical common usage and legal meaning, but the legislative scheme in Part 5.5 of the Health & Safety Code uses the term "physically handicapped persons" and the Unruh Civil Rights Act, §§51, 51.5, 54 and 54.1, and other statutory measures refer to protection of the rights of "physically disabled persons"). Plaintiff BYRON CHAPMAN is a "person with physical disabilities", as defined by all applicable California and United States laws. Plaintiff BYRON CHAPMAN has a spinal cord injury which affects both lower extremities (i.e., right leg has no motor skills but heightened sensitivity and left leg has approximately 15% to 20% motor skills and no sensitivity). Plaintiff BYRON CHAPMAN relies primarily on a wheelchair to travel about in public. Consequently, plaintiff BYRON CHAPMAN is a member of that portion of the public whose rights are protected by the provisions of Health & Safety Code §19955, *et seq.* (entitled "Access to Public Accommodations by Physically Handicapped Persons") and the protections of the Unruh Civil Rights Act, Civil Code §§51 and 51.5 the Disabled Persons Act, Civil Code §54, and the Americans with Disabilities Act, 42 U.S.C. §12101, *et seq.*

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1 7. **DEFINITIONS:**

- 2 a. **ADAAG** - The Americans with Disabilities Act Accessibility Guidelines
3 of 1990; and 2010 ADA Standards
- 4 b. **2010 ADA STANDARDS** - The revised regulations for Title II and III of
5 the Americans with Disabilities Act of 1990 in the Federal Register as of
6 September 15, 2010;
- 7 c. **ARCHITECTURAL BARRIERS** - Architectural barriers are physical
8 features that limit or prevent people with disabilities from obtaining the
9 goods or services that are offered. They can include but are not limited to
10 the following examples: parking spaces that are too narrow to
11 accommodate people who use wheelchairs; a step or steps at the entrance
12 or to part of the selling space of a store; round doorknobs or door hardware
13 that is difficult to grasp; aisles that are too narrow for a person using a
14 wheelchair; electric scooter, or a walker; a high counter or narrow
15 checkout aisles at a cash register, and fixed tables in eating areas that are
16 too low to accommodate a person using a wheelchair or that have fixed
17 seats that prevent a person using a wheelchair from pulling under the table.
18 Excerpted from the “*ADA Guide for Small Businesses*” with an
19 interlineation modification. <http://www.ada.gov/smbustxt.htm>.
20 (The descriptive use of the word “barriers” as used herein is synonymous
21 with architectural barriers).
- 22 d. **ELEMENTS** - An architectural or mechanical component of a building,
23 facility, space, or site (e.g., telephone, curb ramp, door, flush valve,
24 drinking fountain, seating, or water closet, toilet seat, dispensers) and/or
25 placement or lack thereof.
- 26 e. **CATEGORICAL ARCHITECTURAL BARRIERS** - Are elements and
27 facilities which are, or can be architectural barriers standing alone or in
28 combination with one another where the element(s)/facility(s) is/are

noncomplying or where the combination thereof creates a category. For example: such as a parking lot, entrance, restroom, lobby, guest room, dining area.

- f. **PHYSICAL FEATURES** - Are synonymous with “Elements.”
- g. **FACILITY** - All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.
- h. **ENTRANCE** - Any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).
- i. **CLEAR FLOOR SPACE** - The minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.
- j. **ACCESSIBLE ROUTE** - A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.
- k. **PATH OF TRAVEL** - A continuous path connecting all elements and spaces of a building or facility.
- l. **NON COMPLYING** - Not complying with ADAAG and/or the “Readily Achievable Standard” of 28 CFR §36.304.

PRELIMINARY FACTUAL ALLEGATIONS:

8. Plaintiff BYRON CHAPMAN is a “person with physical disabilities,” as defined by all applicable California and United States laws. Plaintiff BYRON CHAPMAN has a spinal cord injury which affects both lower extremities (i.e., right leg has no motor skills but

1 heightened sensitivity and left leg has approximately 15% to 20% motor skills and no
2 sensitivity).

3 9. Giovanni's Pizza, is a restaurant, located at/near 5003 Carpinteria, Carpinteria,
4 California. Giovanni's Pizza, its accessible routes, parking, parking signage, service counter,
5 men and women restrooms, and its other facilities are each a "place of public accommodation or
6 facility" subject to the barrier removal requirements of the Americans with Disabilities Act. On
7 information and belief, each such facility has, since July 1, 1970, undergone "alterations,
8 structural repairs and additions," each of which has subjected the pizza store and each of its
9 facilities, its accessible routes, parking, parking signage, service counter, men and women
10 restrooms to disability access requirements per the Americans with Disabilities Act Accessibility
11 Guidelines (ADAAG), and the California Building Code.

12 10. Defendants Jerry Van Wingerden; Beverly Van Wingerden are the owners of the
13 real property (land and building) located at or near 5003 Carpinteria, Carpinteria, California.

14 11. Albert Noormand, Sharon Lee Noormand and Darush Babai are the operators,
15 tenants and/or sublessors and/or lessees, of the public accommodation known as Giovanni's
16 Pizza, located at/near 5003 Carpinteria, Carpinteria, California, or of the building and/or
17 buildings which constitute said public accommodation.

18 12. At all times relevant to this complaint, defendants Jerry Van Wingerden; Beverly
19 Van Wingerden and Albert Noormand, Sharon Lee Noormand and Darush Babai, own and
20 operate in joint venture the subject Giovanni's Pizzas as a public accommodation. This business is
21 open to the general public and conducts business therein. The business is a "public
22 accommodation" or "public facility" subject to the requirements of California Civil Code §§51,
23 51.5 and 54, *et seq.*, Health and Safety code §19955, *et seq.*, and the ADA, 42 U.S.C. §12101, *et*
24 *seq.*

25 13. On or about February, 1990, defendants Jerry Van Wingerden; Beverly
26 Van Wingerden and each of them purchased and/or took possessory control of the premises now
27 known as Giovanni's Pizza. At all times after July, 1990, defendants' and each of them were
28 aware of their obligation that each of them had a duty to identify and remove architectural

1 barriers and were aware that Giovanni's Pizza was not accessible to the disabled. Nevertheless,
2 defendants' and each of them, operated Giovanni's Pizza as though it was accessible.

3 14. At all times relevant to this complaint, defendants Jerry Van Wingerden; Beverly
4 Van Wingerden and Albert Noormand, Sharon Lee Noormand and Darush Babaiare jointly and
5 severally responsible to identify and remove architectural barriers at the subject pizza store
6 pursuant to Code of Federal Regulations title 28, section 36.201(b), which states in pertinent
7 part:

8 **§ 36.201 General**

9 (b) *Landlord and tenant responsibilities.* Both the landlord who
10 owns the building that houses a place of public accommodation and
11 the tenant who owns or operates the place of public accommodation
12 are public accommodations subject to the requirements of this part.
13 As between the parties, allocation of responsibility for complying
14 with the obligations of this part may be determined by lease or other
15 contract.

16 28 CFR §36.201(b)

17 15. At all times stated herein, defendants' and each of them with the knowledge that
18 each of them had a continuing obligation to identify and remove architectural barriers where it
19 was readily achievable to do so, failed to adopt a transition plan to provide better and/or
20 compliant access to the subject accommodation.

21 16. At all times referred to herein and continuing to the present time, defendant(s),
22 and each of them, advertised, publicized and held out Giovanni's Pizza as being handicapped
23 accessible and handicapped usable.

24 17. At some of the times stated herein, plaintiff BYRON CHAPMAN was in
25 Carpinteria,, for the purposes of: driving the coast, purchasing fuel for the trip and having food
26 and beverage during the trip to Los Angeles.

27 18. On or about December 15, 2016, May 25, 2017 and May 24, 2018, plaintiff
28 BYRON CHAPMAN was an invitee and guest at the subject Giovanni's Pizza , with his wife,
Judi Chapman, for purposes of having food and beverage.

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1 19. On or about December 15, 2016, May 25, 2017 and May 24, 2018 plaintiff
2 BYRON CHAPMAN encountered the following architectural barriers in the parking lot of
3 Giovanni's Pizza and as a legal result had the following adverse experiences: There was no
4 signage for disabled parking and no van accessible parking. As a legal result plaintiff could not
5 park in the parking lot and was compelled to park two blocks away.

6 20. On or about December 15, 2016 and May 25, 2017 plaintiff BYRON
7 CHAPMAN encountered the following architectural barriers at/in the dining area of Giovanni's
8 Pizza and as a legal result had the following adverse experiences: There were few accessible
9 routes between tables/ as a legal result plaintiff BYRON CHAPMAN had difficulty passing
10 by/through the chairs to go to the men's restroom. Plaintiff BYRON CHAPMAN had to have
11 his wife, Judi Chapman, move the chairs out of his way.

12 21. On or about December 15, 2016 and May 25, 2017 plaintiff BYRON
13 CHAPMAN encountered the following architectural barriers in the men's restroom and as a
14 legal result had the following adverse experiences: The toilet seat was too low making it difficult
15 for plaintiff BYRON CHAPMAN to transfer to and from his wheelchair; the toilet paper
16 dispenser was above the grab bar making it difficult for plaintiff BYRON CHAPMAN to use the
17 grab bar; the flush control was on the narrow side making it difficult for plaintiff BYRON
18 CHAPMAN to reach and flush; the lavatory was in a cabinet / as a legal result plaintiff BYRON
19 CHAPMAN could not reach the controls unless he positioned his wheelchair sideways causing
20 him to get water on his clothes because the reach stretch was with only one hand.

21 22. On or about December 15, 2016 and May 25, 2017 plaintiff BYRON
22 CHAPMAN encountered the following architectural barriers at the service area of Giovanni's
23 Pizza and as a legal result had the following adverse experiences: The service counter was too
24 high/as a legal result plaintiff BYRON CHAPMAN struggled to use it.

25 23. On or about December 15, 2016, plaintiff BYRON CHAPMAN wrote a note to
26 the management of Giovanni's Pizza and gave it to Johnny. Plaintiff BYRON CHAPMAN
27 wrote:

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1 “Johnny please give to manager.

2 I was a patron at your business today. Your salad and pizza were
3 great! Service was also very good. However my experience dining
4 here could have been more enjoyable.

5 You had empty parking spaces but no disability parking!
6 Your order and cashier counter are to high for a wheelchair user.

7 It was difficult moving between the tables and chairs to get
8 to a table that would accommodate my wheelchair. When in your
9 men’s restroom, the toilet seat seemed very low to the floor and
10 made it very difficult to get on and off it, plus the toilet paper
11 dispenser made hard to grab the grab bar because it is over the bar
12 and hard to reach flush control. Last, the sink was extremely hard to
13 use because i could not get my foot rest and knees under the sink
14 due to the cabinet under it. My wife and I really enjoyed the food
15 and look forward to and look forward to coming back for your great
16 pizza. Please write me back in a day or two and let me know what
17 you are going to do to fix it and when you will get it done!”
18

19 Plaintiff BYRON CHAPMAN never received a response.

20 24. On or about May 24, 2018, plaintiff BYRON CHAPMAN encountered the
21 following architectural barriers at/in the parking lot of Giovanni’s Pizza and as a legal result
22 had the following adverse experiences: There was still no accessible parking/as a legal result
23 plaintiff could not park and was compelled to leave.

24 25. On or about May 31, 2018, and thereafter, plaintiff would have returned to
25 Giovanni’s Pizza but was deterred from returning for the fear that once he returned, he would
26 encounter all of the same architectural barriers as on the first visit and that not even the easiest
27 barrier(s) would have been removed such as the following: raising the toilet seat and removing
28 the lavatory cabinet, to make it easier to enjoy the goods, services and opportunities afforded

1 by this public accommodation.

2 26. At said time(s) and place, plaintiff BYRON CHAPMAN had need to use a
3 restroom. It did not matter whether it was designated as a men's or women's restroom as long
4 as it was accessible.

5 27. Therefore, at said time(s) and place, plaintiff BYRON CHAPMAN, encountered
6 the following architectural barriers as stated herein or lack thereof and/or "elements" and
7 "facilities" which constituted architectural barriers and/or categorical architectural barriers and a
8 denial of the proper and legally required access to a public accommodation to persons with
9 physical disabilities including, but not limited to:

10 28. Specific architectural barriers encountered by plaintiff BYRON CHAPMAN at
11 time(s) and place herein in addition to categorical architectural barriers stated herein and the
12 respective difficulties experienced by plaintiff as stated herein, the barriers include but are not
13 limited to:

14 **PARKING**

- 15 • no van accessible parking stall(s) and access aisle(s);
- 16 • no disabled parking Fine(\$250) sign;
- 17 • no tow-a-way signage with phone number;

18 **ENTRANCE**

- 19 • no International Symbol of Accessibility (ISA) signage

20 **DINING**

- 21 • service counter too high;

22 **PATH OF TRAVEL**

- 23 • narrow aisle(s) between table(s);

24 **RESTROOMS**

- 25 • noncomplying: men's and women's restroom;
- 26 • toilet that is not usable in whole or in part;
- 27 • flush control of toilet on the narrow side between wall and toilet tank;
- 28 wrong side;

- 1 • toilet paper dispenser located too high/not usable;
- 2 • toilet paper dispenser also too high and/or not properly placed;
- 3 • lavatory in cabinet;

4 Therefore, as a legal result of encountering each of said elements, plaintiff experienced one, all,
 5 or a combination of the following difficulties: stress, strain, difficulty, and discomfort to his
 6 upper extremities in attempting to and/or using said elements also causing anxiety,
 7 disappointment, and embarrassment.

8 29. At all time(s) as stated herein, plaintiff encountered architectural barrier(s) as
 9 stated herein and/or had personal knowledge of said barrier(s) and knew it would be a futile
 10 gesture to attempt to overcome it/them because of his disability.

11 30. At all times stated herein, it was “readily achievable” for defendants to remove
 12 some and/or all of the architectural barriers complained of over a reasonable period of time from
 13 the date that defendants initially took possession to meet the affirmative duty to identify and
 14 remove architectural barriers where it is readily achievable to do so. In that regard, defendants
 15 could have but did not avail themselves of the tax deduction and tax credits provided by Internal
 16 Revenue Services (“IRS”) codes 44 and 190, which apply to the costs of barrier removal.

17 31. At all time(s) and place, each architectural element as stated herein that did
 18 not strictly comply with or substantially comply with the ADAAG minimum requirements
 19 constituted an architectural barrier which precluded plaintiff from full and equal opportunities
 20 afforded to non disabled persons to the goods and services of Giovanni’s Pizza.

21 32. Plaintiff was and is deterred from returning to Giovanni’s Pizza so long as
 22 architectural barrier(s) complained of that he/she encountered, as stated herein are not ADAAG
 23 compliant.

24 33. At said time(s) and place, when plaintiff encountered the architectural barriers as
 25 stated herein, and/or in seeing a barrier(s) and/or attempting to overcome the barriers to gain
 26 access experienced any one or combination of physical difficulty, discomfort, embarrassment,
 27 stress, strain, fatigue, anger, annoyance and disappointment. This arose from plaintiff’s physical
 28 inability to effectively use his upper extremities to easily overcome the architectural barriers as

1 stated herein. This constitutes a denial of full and equal access to the subject public
2 accommodation and a denial of the opportunity to independently enjoy and participate in the
3 opportunities, goods and services offered to non disabled persons and patrons, invitees and
4 guests.

5 34. Said architectural barrier(s) as stated herein deprived and deterred plaintiff the
6 same full and equal access that a non wheelchair user/non disabled person would enjoy while
7 while engaging in the goods, service and opportunities offered at the subject Giovanni's Pizza.

8 35. At all times stated herein, the existence of architectural barriers at
9 defendants' place of public accommodation evidenced "actual notice" of defendants intent not
10 to comply with the Americans with Disabilities Act of 1990 either then, now or in the future.

11 36. As a legal result of defendants and each of their failure to act as a reasonable and
12 prudent public accommodation in identifying, removing or creating architectural barriers,
13 policies, practices and procedures that denied access to plaintiff and other persons with
14 disabilities, plaintiff suffered the damages as alleged herein.

15 37. As a result of the denial of equal access to defendant(/s/') facilities due to the acts
16 and omissions of defendants, and each of them, in owning, operating and maintaining these
17 subject public facilities, plaintiff BYRON CHAPMAN suffered violations of plaintiff's civil
18 rights, including, but not limited to rights under Civil Code §§51, 52, 54, 54.1, and 54.3, *et seq.*
19 And, plaintiff BYRON CHAPMAN suffered bodily injury at time(s) stated herein. And/or as a
20 legal result of encountering architectural barriers experienced one or a combination of:
21 difficulty, discomfort and embarrassment. Specifically, as a legal result of defendants
22 negligence in the design, construction and maintenance of the existing service counter, plaintiff
23 suffered continuous, repetitive and cumulative trauma to his upper extremities while attempting
24 to pay for his food and beverage.

25 38. Further, plaintiff suffered emotional distress, mental distress, mental suffering,
26 mental anguish, which includes, but is not limited to, shame, humiliation, embarrassment, upset,
27 anger, frustration, disappointment and worry, expectedly and naturally associated with a person
28 with physical disabilities encountering architectural barrier(s) as stated herein and being denied

1 access, all to his damages as prayed hereinafter in an amount within the jurisdiction of this court.
2 No claim is being made for mental and emotional distress over and above that is usually
3 associated with the encountering of architectural barriers and legally resulting in adverse
4 experiences. No expert testimony regarding this usual mental and emotional distress will be
5 presented at trial in support of the claim for damages.

6 39. Defendants Jerry Van Wingerden; Beverly Van Wingerden, and each of their,
7 failure to remove the architectural barriers complained of herein created, at the time of plaintiff's
8 first visit to said public accommodation, and continues to create continuous and repeated
9 exposure to substantially the same general harmful conditions which caused plaintiff harm as
10 stated herein.

11 40. Plaintiff BYRON CHAPMAN was denied his rights to equal access to a public
12 facility by defendants Jerry Van Wingerden; Beverly Van Wingerden and Albert Noormand,
13 Sharon Lee Noormand and Darush Babaiare , because defendants Jerry Van Wingerden; Beverly
14 Van Wingerden and Albert Noormand, Sharon Lee Noormand and Darush Babaiare
15 maintained a restaurant without access for persons with physical disabilities to its facilities,
16 including but not limited to the accessible routes, parking, parking signage, service counter, men
17 and women restrooms and other public areas as stated herein, and continue to the date of filing
18 this complaint to deny equal access to plaintiff and other persons with physical disabilities in
19 these and other ways.

20 41. Construction alterations, if any, carried out by defendants have also triggered
21 access requirements under both California law and the Americans with Disabilities Act of 1990.

22 42. Defendants may have intentionally undertaken to modify and alter existing
23 building(s), and may have failed to make them comply with accessibility requirements under the
24 requirements of ADAAG and California Building Code.

25 43. Defendants have been negligent in their affirmative duty to identify the
26 architectural barriers complained of herein and negligent in the removal of some or all of said
27 barriers.

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1 44. Because of defendants' violations, plaintiff and other persons with physical
 2 disabilities are unable to use public facilities such as those owned and operated by defendants on
 3 a "full and equal" basis unless such facility is in compliance with the provisions of the
 4 Americans with Disabilities Act of 1990, Civil Code §51, Civil Code §54.1 and Health & Safety
 5 Code §19955, *et seq.* and other accessibility law as pled herein. Plaintiff seeks an order from this
 6 court compelling defendants to make the Giovanni's Pizza accessible to persons with
 7 disabilities.

8 45. Plaintiff, as described herein below, seeks injunctive relief to require the pizza
 9 store to be made accessible to meet the requirements of both California law and the Americans
 10 with Disabilities Act of 1990, whichever is more restrictive, so long as defendants operate the
 11 store as a public facility.

12 46. Plaintiffs believes that even with service of the summons and complaint on
 13 defendants and each of them, that defendants will not , under their "continuing obligation"
 14 immediately undertake remedial action to identify and remove architectural barriers.

15 47. Plaintiff seeks damages for violation of his civil rights on December 15, 2016,
 16 May 25, 2017 and May 24, 2018 and **deterrence occasion(s)** and seeks statutory damages of not
 17 less than \$4,000, pursuant to Civil Code §52(a), for each day after his visit that the trier of fact
 18 (court/jury) determines was the date that some or all remedial work should have been completed
 19 under the standard that the landlord and tenant had an ongoing duty to identify and remove
 20 architectural barriers where it was readily achievable to do so, which deterred plaintiff from
 21 returning to the subject public accommodation because of his/her knowledge and/or belief that
 22 neither some or all architectural barriers had been removed and that said premises remains
 23 inaccessible to persons with disabilities whether a wheelchair user or otherwise. The acts and
 24 omission of defendant(s), and each of them, in failing to provide the required accessible public
 25 facilities at the time of plaintiff's visit and injuries, indicate actual and implied malice toward
 26 plaintiff, and despicable conduct carried out by defendant(s), and each of them, with a willful and
 27 conscious disregard for the rights and safety of plaintiff and other similarly situated persons, and
 28 justify a trebling of damages as provided by Civil Code §§52(a) and 54.3, in order to make a

1 more profound example of defendants, and each of them, to other operators and landlords of
2 other pizza stores and other public facilities, and to punish defendants and to carry out the
3 purposes of the Civil Code §§ 51, 51.5 and 54.

4 48. At all times stated herein and for post complaint occasions, plaintiff has an
5 absolute unfettered civil right to return to the public accommodation(s) complained of within
6 thirty (30) day intervals until defendants remove all architectural barriers under their continuing
7 obligation to identify and remove architectural barriers.

8 49. Plaintiff is informed and believes and therefore alleges that defendants Jerry Van
9 Wingerden and Beverly Van Wingerden and each of them, caused the subject building(s) which
10 constitute the Giovanni's Pizza to be constructed, altered and maintained in such a manner that
11 persons with physical disabilities were denied full and equal access to, within and throughout
12 said building(s) of the Giovanni's Pizza and were denied full and equal use of said public
13 facilities. Furthermore, on information and belief, defendants have continued to maintain and
14 operate said Giovanni's Pizza and/or its building(s) in such conditions up to the present time,
15 despite actual and constructive notice to such defendants that the configuration of Giovanni's
16 Pizza and/or its building(s) is in violation of the civil rights of persons with physical disabilities,
17 such as plaintiff and other members of the disability community. Such construction,
18 modification, ownership, operation, maintenance and practices of such public facilities are in
19 violation of Civil Code §§51, 51.5 and 54, Health and Safety Code §19955, and the ADA, 42
20 U.S.C. §12101, *et seq.*

21 50. Defendants actual and constructive notice that the physical configuration of the
22 facilities including, but not limited to, architectural barriers constituting Giovanni's Pizza and/or
23 building(s) was in violation of the civil rights of persons with physical disabilities, such as
24 plaintiff, includes, but is not limited to, coming into contact with public accommodations with
25 accessible elements and facilities since January 26, 1991, communications with invitees and
26 guests, plaintiff Byron Chapman himself, possibly sponsors of conferences, owners of other
27 restaurants, hotels, motels and businesses, notices they obtained from governmental agencies
28 upon modification, improvement, or substantial repair of the subject premises and other

properties owned by these defendants, newspaper articles and trade publications regarding the Americans with Disabilities Act of 1990 and other access laws, public service announcements by former U.S. Attorney General Janet Reno between 1993 and 2000, and other similar information. Defendants failure, under state and federal law, to make Giovanni's Pizza accessible is further evidence of defendants conscious disregard for the rights of plaintiff and other similarly situated persons with disabilities. Despite being informed of such effect on plaintiff and other persons with physical disabilities due to the lack of accessible facilities, defendant(s), and each of them, knowingly and willfully refused to take any steps to rectify the situation and to provide full and equal access for plaintiff and other persons with physical disabilities to the pizza store. Said defendants, and each of them, have continued such practices, in conscious disregard for the rights of plaintiff and other persons with physical disabilities, up to the date of filing of this complaint, and continuing thereon. Defendants had further actual knowledge of the architectural barriers referred to herein by virtue of the demand letter addressed to the defendants and served concurrently with the summons and complaint. Said conduct, with knowledge of the effect it was and is having on plaintiff and other persons with physical disabilities, constitutes despicable conduct in conscious disregard of the rights and safety of plaintiff and of other similarly situated persons, justifying the imposition of treble damages per Civil Code §§52 and 54.3.

51. Plaintiff BYRON CHAPMAN and the disability community, including 4A4U, consisting of persons with disabilities, would, could and will return to the subject public accommodation when it is made accessible to persons with disabilities.

I. FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §12101, *et seq.*)
 (On behalf of Plaintiff BYRON CHAPMAN, and Against Defendants Jerry Van Wingerden; Beverly Van Wingerden, inclusive)
 (42 U.S.C. §12101, *et seq.*)

52. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 51 of this complaint.

53. Pursuant to law, in 1990, the United States Congress made findings per 42 U.S.C. §12101 regarding persons with physical disabilities, finding that laws were needed to more

1 fully protect:

2 some 43 million Americans with one or more physical or mental
3 disabilities; [that] historically society has tended to isolate and
4 segregate individuals with disabilities; [that] such forms of
5 discrimination against individuals with disabilities continue to be a
6 serious and pervasive social problem; [that] the nation's proper
7 goals regarding individuals with disabilities are to assure equality
8 of opportunity, full participation, independent living and economic
9 self-sufficiency for such individuals; [and that] the continuing
10 existence of unfair and unnecessary discrimination and prejudice
11 denies people with disabilities the opportunity to compete on an
12 equal basis and to pursue those opportunities for which our free
13 society is justifiably famous.

14 54. Congress stated as its purpose in passing the Americans with Disabilities Act of
15 1990 (42 U.S.C. §12102):

16 It is the purpose of this act (1) to provide a clear and
17 comprehensive national mandate for the elimination of
18 discrimination against individuals with disabilities; (2) to provide
19 clear, strong, consistent, enforceable standards addressing
20 discrimination against individuals with disabilities; (3) to ensure
21 that the Federal government plays a central role in enforcing the
22 standards established in this act on behalf of individuals with
23 disabilities; and (4) to invoke the sweep of Congressional
24 authority, including the power to enforce the 14th Amendment and
25 to regulate commerce, in order to address the major areas of
26 discrimination faced day to day by people with disabilities.

27 55. As part of the Americans with Disabilities Act of 1990, Public Law 101-336
28 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services
Operated by Private Entities" (Section 301 42 U.S.C. §12181, *et seq.*). Among the public
accommodations identified for purposes of this title was:

(7) PUBLIC ACCOMMODATION - The following private
entities are considered public accommodations for purposes of this
title, if the operations of such entities affect commerce -

(B) a restaurant, bar or other establishment serving food or drink;

42 U.S.C. §12181(7)(B)

56. Pursuant to §302, 42 U.S.C. §12182, "No individual shall be discriminated
against on the basis of disability in the full and equal enjoyment of the goods, services, facilities,
privileges, advantages, or accommodations of any place of public accommodation by any person
who owns, leases, or leases to, or operates a place of public accommodation."

1 57. The specific prohibitions against discrimination set forth in §302(b)(2)(a),
2 42 U.S.C. §12182(b)(2)(a) are:

3 (I) the imposition or application of eligibility criteria
4 that screen out or tend to screen out an individual with a disability
5 or any class of individuals with disabilities from fully and equally
6 enjoying any goods, services, facilities, privileges, advantages, or
accommodations, unless such criteria can be shown to be necessary
for the provision of the goods, services, facilities, privileges,
advantages, or accommodations being offered;

7 (ii) a failure to make reasonable modifications in
8 policies, practices, or procedures, when such modifications are
9 necessary to afford such goods, services, facilities, privileges,
10 advantages or accommodations to individuals with disabilities,
unless the entity can demonstrate that making such modifications
would fundamentally alter the nature of such goods, services,
facilities, privileges, advantages, or accommodations;

11 (iii) a failure to take such steps as may be necessary to
12 ensure that no individual with a disability is excluded, denied
13 services, segregated or otherwise treated differently than other
14 individuals because of the absence of auxiliary aids and services,
15 unless the entity can demonstrate that taking such steps would
16 fundamentally alter the nature of the good, service, facility,
17 privilege, advantage, or accommodation being offered or would
result in an undue burden;

18 (iv) a failure to remove architectural barriers, and
19 communication barriers that are structural in nature, in existing
20 facilities . . . where such removal is readily achievable; and

21 (v) where an entity can demonstrate that the removal of
22 a barrier under clause (iv) is not readily achievable, a failure to
23 make such goods, services, facilities, privileges, advantages or
24 accommodations available through alternative methods if such
25 methods are readily achievable.

26 The acts of defendants set forth herein were a violation of plaintiff's rights under the ADA,
27 Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part 36, *et seq.* -
28 Effective January 31, 1993, the standards of the ADA were also incorporated into California
Civil Code §51, making available the damage remedies incorporated into Civil Code §51 and
52(a) and 54.3.

58. The removal of the barriers complained of by plaintiff as hereinabove alleged
were at all times after January 26, 1992 "readily achievable" as to the subject building(s) of
Giovanni's Pizza pursuant to 42 U.S.C. §12182 (b)(2)(A)(i)-(iv). On information and belief, if

1 the removal of all the barriers complained of herein together was not “readily achievable,” the
 2 removal of each individual barrier complained of herein was “readily achievable.” On
 3 information and belief, defendants’ failure to remove said barriers was likewise due to
 4 discriminatory practices, procedures and eligibility criteria, as defined by 42 U.S.C. §12182
 5 (b)(2)(A)(i) and (ii).

6 59. Per 42 U.S.C. §12181 (9), the term “readily achievable” means “easily
 7 accomplishable and able to be carried out without much difficulty or expense.” The statute
 8 defines relative “expense” in part in relation to the total financial resources of the entities
 9 involved. Plaintiff alleges that properly repairing, modifying, or altering each of the items that
 10 plaintiff complains of herein were and are “readily achievable” by the defendants under the
 11 standards set forth under §301(9) of the Americans with Disabilities Act. Furthermore, if it was
 12 not “readily achievable” for defendants to remove each of such barriers, defendants have failed to
 13 make the required services available through alternative methods which were readily achievable.

14 60. On information and belief, construction work on, and modifications of, the subject
 15 building(s) of Giovanni’s Pizza occurred after the compliance date for the Americans with
 16 Disabilities Act, January 26, 1992, independently triggering access requirements under Title III
 17 of the ADA.

18 61. Pursuant to the Americans with Disabilities Act of 1990, 42 U.S.C. §12188, *et*
 19 *seq.*, plaintiff is entitled to the remedies and procedures set forth in §204(a) of the Civil Rights
 20 Act of 1964, 42 U.S.C. 2000(a)-3(a), as plaintiff is being subjected to discrimination on the basis
 21 of disability in violation of this title or have reasonable grounds for believing that plaintiff is
 22 about to be subjected to discrimination in violation of §302. Plaintiff is deterred from returning
 23 to or making use of the public facilities complained of herein so long as the premises and
 24 defendants’ policies bar full and equal use by persons with physical disabilities.

25 62. 42 U.S.C. 12188 (a)(1) states: “Nothing in this section shall require a person with
 26 a disability to engage in a futile gesture if such person has actual notice that a person or
 27 organization covered by this title does not intend to comply with its provisions.” Pursuant to
 28 this section, plaintiff BYRON CHAPMAN has not returned to defendants’ premises since on or

1 about May 24, 2018, but on information and belief, alleges that defendants have continued to
 2 violate the law and deny the rights of plaintiff and of other persons with physical disabilities to
 3 access this public accommodation. Pursuant to 42 USC §12188(a)(2), “In cases of violations of
 4 §302(b)(2)(A)(iv) . . . injunctive relief shall include an order to alter facilities to make such
 5 facilities readily accessible to and usable by individuals with disabilities to the extent required by
 6 this title.”

7 63. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights
 8 Act of 1964 (42 U.S.C. 2000(a)-3(a)), and pursuant to federal regulations adopted to implement
 9 the Americans with Disabilities Act of 1990, including but not limited to an order granting
 10 injunctive relief and attorneys’ fees. Plaintiff will seek attorneys’ fees conditioned upon being
 11 deemed to be the prevailing party.

12 **II. SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS**
 13 **IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, ET SEQ.**
 14 (On Behalf of Plaintiff BYRON CHAPMAN, and Against Defendants Jerry Van
 15 Wingerden; Beverly Van Wingerden, inclusive)
 16 (California Civil Code §§54, 54.1, 54.3, *et seq.*)

17 64. Plaintiff repleads and incorporates by reference as if fully set forth again herein,
 18 the allegations contained in paragraphs 1 through 63 of this complaint.

19 65. At all times relevant to this action, California Civil Code §54 has provided that
 20 persons with physical disabilities are not to be discriminated against because of physical
 21 handicap or disability. This section provides that:

22 (a) Individuals with disabilities . . . have the same rights as
 23 the general public to full and free use of the streets, highways,
 24 sidewalks, walkways, public buildings, medical facilities, including
 25 hospitals, clinics, and physicians’ offices, and other public places.

26 66. California Civil Code §54.1 provides that persons with disabilities shall not be
 27 denied full and equal access to places of public accommodation or facilities:

28 (a)(1) Individuals with disabilities shall be entitled to full
 and equal access, as other members of the general public, to
 accommodations, advantages, facilities, medical facilities,
 including hospitals, clinics, and physicians’ offices, and privileges
 of all common carriers, airplanes, motor vehicles, railroad trains,
 motorbuses, streetcars, boats, or any other public conveyances or
 modes of transportation (whether private, public, franchised,

licensed, contracted, or otherwise provided), telephone facilities, adoption agencies, private schools, hotels, lodging places, places of public accommodation, amusement or resort, and other places to which the general public is invited, subject only to the conditions and limitations established by law, or state or federal regulation, and applicable alike to all persons.

Civil Code §54.1(a)(1)

67. California Civil Code §54.1 further provides that a violation of the Americans with Disabilities Act of 1990 constitutes a violation of section 54.1:

(d) A violation of the right of an individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) also constitutes a violation of this section, and nothing in this section shall be construed to limit the access of any person in violation of that act.

Civil Code §54.1(d)

68. Plaintiff BYRON CHAPMAN is a person within the meaning of Civil Code §54.1 whose rights have been infringed upon and violated by the defendant(s), and each of them, as prescribed by Civil Code §§54 and 54.1. Each specific architectural barrier which defendant(s) knowingly and willfully fail and refuse to remove constitutes a separate act in violation of Civil Code §§54 and 54.1. Plaintiff has been and continues to be denied full and equal access to defendants' Giovanni's Pizza. As a legal result, plaintiff is entitled to seek damages pursuant to a court or jury determination, in accordance with California Civil Code §54.3(a) for each day on which he visited or have been deterred from visiting Giovanni's Pizza because of his knowledge and belief that the store is inaccessible to persons with disabilities.

California Civil Code §54.3(a) provides:

Any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for the actual damages and any amount as may be determined by a jury, or the court sitting without a jury, up to a maximum of three times the amount of actual damages but in no case less than . . . one thousand dollars (\$1,000) and . . . attorney's fees as may be determined by the court in addition thereto, suffered by any person denied any of the rights provided in Sections 54, 54.1 and 54.2.

Civil Code §54.3(a)

69. On or about December 15, 2016, May 25, 2017 and May 24, 2018, and **deterrence occasion(s)** plaintiff BYRON CHAPMAN suffered violations of Civil Code §§54 and 54.1 in that plaintiff was denied access to accessible routes, parking, parking signage, service counter, men and women restrooms and other public facilities as stated herein at the Giovanni's Pizza and on the basis that plaintiff BYRON CHAPMAN was a person with physical disabilities.

70. As a result of the denial of equal access to defendants' facilities due to the acts and omissions of defendant(s), and each of them, in owning, operating and maintaining these subject public facilities, plaintiff BYRON CHAPMAN suffered violations of plaintiff's civil rights, including, but not limited to rights under Civil Code §§51, 52, 54, 54.1, and 54.3, *et seq.* And, plaintiff BYRON CHAPMAN suffered bodily injury at time(s) stated herein. And/or as a legal result of encountering architectural barriers experienced one or a combination of: difficulty, discomfort and embarrassment. Specifically, as a legal result of defendants negligence in the design, construction and maintenance of the existing service counter, plaintiff suffered continuous, repetitive and cumulative trauma to his/her right/left upper extremities while attempting to use the counter top.

71. Further, plaintiff suffered emotional distress, mental distress, mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation, embarrassment, upset, anger, frustration, disappointment and worry, expected and naturally associated with a person with physical disabilities encountering architectural barrier(s) as stated herein and being denied access, all to his damages as prayed hereinafter in an amount within the jurisdiction of this court. No claim is being made for mental and emotional distress over and above that is usually associated with the encountering of architectural barriers and legally resulting in adverse experiences. No expert testimony regarding this usual mental and emotional distress will be presented at trial in support of the claim for damages.

72. Plaintiff has been damaged by defendants, and each of their, wrongful conduct and seeks the relief that is afforded by Civil Code §§54 and 54.1, 54.3 for violation of plaintiff's rights as a person or an entity that represents persons with physical disabilities on or about December 15, 2016, May 25, 2017 and May 24, 2018 *and deterrence occasion(s)*, and on a

continuing basis since then, including statutory damages, a trebling of all of actual damages, general and special damages available pursuant to §54.3 of the Civil Code according to proof.

73. As a result of defendants, and each of their, acts and omissions in this regard, plaintiff has been required to incur legal expenses and hire attorneys in order to enforce plaintiff's rights and enforce the provisions of the law protecting access for persons with physical disabilities and prohibiting discrimination against persons with physical disabilities. Pursuant to the provisions of Civil Code §54.3, plaintiff therefore will seek recovery in this lawsuit for all reasonable attorneys' fees and costs incurred if deemed the prevailing party. Additionally, plaintiff's lawsuit is intended not only to obtain compensation for damages to plaintiff, but also to compel the defendants to make their facilities accessible to all members of the public with disabilities, justifying public interest attorneys' fees, if deemed the prevailing party, pursuant to the provisions of §1021.5 of the Code of Civil Procedure.

III. THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE §19955, *ET. SEQ.*
(On Behalf of Plaintiff BYRON CHAPMAN, and Against Defendants Jerry Van Wingerden; Beverly Van Wingerden, inclusive)
(Health & Safety Code §19955, *et seq.*)

74. Plaintiff repleads and incorporates by reference, as if fully set forth again herein, the allegations contained in paragraphs 1 through 73 of this complaint.

75. Health & Safety Code §19955 provides in pertinent part:

The purpose of this part is to insure that public accommodations or facilities constructed in this state with private funds adhere to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code. For the purposes of this part "public accommodation or facilities" means a building, structure, facility, complex, or improved area which is used by the general public and shall include auditoriums, hospitals, theaters, restaurants, hotels, motels, stadiums, and convention centers. When sanitary facilities are made available for the public, clients or employees in such accommodations or facilities, they shall be made available for the handicapped.

76. Health & Safety Code §19956, which appears in the same chapter as §19955, provides in pertinent part, "accommodations constructed in this state shall conform to the provisions of Chapter 7 (commencing with Sec. 4450) of Division 5 of Title 1 of the Government Code" Health & Safety Code §19956 was operative July 1, 1970, and is applicable to all

1 public accommodations constructed or altered after that date. On information and belief,
2 portions of Giovanni's Pizza and/or of the building(s) were constructed and/or altered after July
3 1, 1970, and substantial portions of the Giovanni's Pizza and/or the building(s) had alterations,
4 structural repairs, and/or additions made to such public accommodations after July 1, 1970,
5 thereby requiring said public accommodation and/or building to be subject to the requirements
6 of Part 5.5, §19955, *et seq.*, of the Health & Safety Code upon such alteration, structural repairs
7 or additions per Health & Safety Code §19959.

8 77. Pursuant to the authority delegated by Government Code §4450, *et seq.*, the State
9 Architect promulgated regulations for the enforcement of these provisions. Effective July 1,
10 1982, Title 24 of the California Building Standards Code adopted the California State Architect's
11 Regulations and these regulations must be complied with as to any alterations and/or
12 modifications of Giovanni's Pizza and/or the building(s) occurring after that date. Construction
13 changes occurring prior to this date but after July 1, 1970 triggered access requirements pursuant
14 to the "ASA" requirements, the American Standards Association Specifications, A117.1-1961.
15 On information and belief, at the time of the construction and modification of said building, all
16 buildings and facilities covered were required to conform to each of the standards and
17 specifications described in the American Standards Association Specifications and/or those
18 contained in the California Building Code.

19 78. Public restaurants such as Giovanni's Pizza are "public accommodations or
20 facilities" within the meaning of Health & Safety Code §19955, *et seq.*

21 79. As a result of the actions and failure to act of defendants, and as a result of the
22 failure to provide proper and legally handicapped-accessible public facilities, plaintiff was denied
23 plaintiff's rights to full and equal access to public facilities and suffered a loss of plaintiff's civil
24 rights and plaintiff's rights as a person with physical disabilities to full and equal access to public
25 facilities.

26 80. Attorneys' Fees -- As a result of defendants acts and omissions in this regard,
27 plaintiff has been required to incur legal expenses and hire attorneys in order to enforce
28 plaintiff's civil rights and enforce provisions of the law protecting access for the persons with

1 physical disabilities and prohibiting discrimination against the persons with physical disabilities,
 2 and to take such action both in plaintiff's own interests and in order to enforce an important right
 3 affecting the public interest. Plaintiff, therefore, seeks in this lawsuit the recovery of all
 4 reasonable attorneys' fees incurred, pursuant to the provisions of the Code of Civil Procedure
 5 §1021.5. Plaintiff additionally seeks attorneys' fees pursuant to Health & Safety Code §19953
 6 and Civil Code §§54.3 and/or in the alternative, plaintiff will seek attorneys' fees, costs and
 7 litigation expenses pursuant to §204(a) of the Civil Rights Act of 1964 (42 U.S.C. 200(a)-3(a)).
 8 Plaintiff will seek attorneys' fees conditioned upon being deemed to be the prevailing party.

9 81. Plaintiff seeks injunctive relief for an order compelling defendants, and each of
 10 them, to make the subject place of public accommodation readily accessible to and usable by
 11 persons with disabilities.

12 **IV. FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS TO FULL AND**
 13 **EQUAL ACCOMMODATIONS, ADVANTAGES, FACILITIES, PRIVILEGES**
 14 **AND/OR SERVICES IN VIOLATION OF CALIFORNIA CIVIL CODE §51, ET**
 15 **SEQ. (THE UNRUH CIVIL RIGHTS ACT)**
 (On Behalf of Plaintiff BYRON CHAPMAN, and Against Defendants Jerry Van
 Wingerden; Beverly Van Wingerden, inclusive)
 (Civil Code §51, 51.5)

16 82. Plaintiff repleads and incorporates by reference, as if fully set forth again herein,
 17 the allegations contained in paragraphs 1 through 81 of this complaint.

18 83. Defendants' actions and omissions and failure to act as a reasonable and prudent
 19 public accommodation in identifying, removing and/or creating architectural barriers, policies,
 20 practices and/or procedures violates §51 of the Civil Code, the Unruh Civil Rights Act. The
 21 Unruh Act provides:

22 This section shall be known, and may be cited, as the
 23 Unruh Civil Rights Act.

24 All persons within the jurisdiction of this state are free and
 25 equal, and no matter what their sex, race, color, religion, ancestry,
 26 national origin, or **disability** are entitled to the full and equal
 accommodations, advantages, facilities, privileges, or services in
 all business establishments of every kind whatsoever.

27 This section shall not be construed to confer any right or
 28 privilege on a person that is conditioned or limited by law or that is
 applicable alike to persons of every sex, color, race, religion,
 ancestry, national origin, or **disability**.

1 Nothing in this section shall be construed to require any
 2 construction, alteration, repair, structural or otherwise, or
 3 modification of any sort whatsoever, beyond that construction,
 4 alteration, repair, or modification that is otherwise required by
 5 other provisions of law, to any new or existing establishment,
 6 facility, building, improvement, or any other structure . . . nor shall
 7 anything in this section be construed to augment, restrict, or alter in
 8 any way the authority of the State Architect to require construction,
 9 alteration, repair, or modifications that the State Architect
 10 otherwise possesses pursuant to other . . . laws.

11 A violation of the right of any individual under the
 12 Americans with Disabilities Act of 1990 (Public Law 101-336)
 13 shall also constitute a violation of this section.

14 As the Unruh Act incorporates violations of the Americans with Disabilities Act of 1990, the
 15 “intent” of the defendants in not complying with barrier removal is not an issue. Hence, the
 16 failure on the parts of defendants, as reasonable and prudent public accommodations, in acting
 17 or failing to act to identify and remove barriers can be construed as a “negligent per se” act of
 18 defendant(s), and each of them.

19 84. The acts and omissions of defendants stated herein are discriminatory in nature
 20 and in violation of Civil Code §51.5:

21 No business establishment of any kind whatsoever shall
 22 discriminate against, boycott or blacklist, refuse to buy from, sell
 23 to, or trade with any person in this state because of the race, creed,
 24 religion, color, national origin, sex, or **disability** of the person or of
 25 the person’s partners, members, stockholders, directors, officers,
 26 managers, superintendents, agents, employees, business associates,
 27 suppliers, or customers.

28 As used in this section, “person” includes any person, firm
 association, organization, partnership, business trust, corporation,
 limited liability company, or company.

 Nothing in this section shall be construed to require any
 construction, alteration, repair, structural or otherwise, or
 modification of any sort whatsoever, beyond that construction,
 alteration, repair or modification that is otherwise required by other
 provisions of law, to any new or existing establishment, facility,
 building, improvement, or any other structure . . . nor shall
 anything in this section be construed to augment, restrict or alter in
 any way the authority of the State Architect to require construction,
 alteration, repair, or modifications that the State Architect
 otherwise possesses pursuant to other laws.

///

85. Defendants acts and omissions as specified have denied to the plaintiff full and equal accommodations, advantages, facilities, privileges and services in a business establishment, on the basis of physical disability, in violation of Civil Code §§51 and 51.5, the Unruh Civil Rights Act. Furthermore, pursuant to the 1992 amendment to California Civil Code §51, “A violation of the right of any individual under the Americans with Disabilities Act of 1990 (Public Law 101-336) shall also constitute a violation of this section.” Plaintiff accordingly incorporates the entirety of his above cause of action for violation of the Americans with Disabilities Act at ¶52, *et seq.*, as if repled herein.

86. As a result of the denial of equal access to defendants facilities due to the acts and omissions of defendants, and each of them, in owning, operating and maintaining these subject public facilities, plaintiff BYRON CHAPMAN suffered violations of plaintiff’s civil rights, including, but not limited to rights under Civil Code §§51, 52, 54, 54.1, and 54.3, *et seq.* And, plaintiff BYRON CHAPMAN suffered bodily injury at time(s) stated herein. And/or as a legal result of encountering architectural barriers experienced one or a combination of: difficulty, discomfort and embarrassment. Specifically, as a legal result of defendants negligence in the design, construction and maintenance of the existing service counter, plaintiff BYRON CHAPMAN suffered continuous, repetitive and cumulative trauma to his upper extremities while attempting to pay for his food and beverage.

87. Further, plaintiff suffered emotional distress, mental distress, mental suffering, mental anguish, which includes, but is not limited to, shame, humiliation, embarrassment, upset, anger, frustration, disappointment and worry, expectedly and naturally associated with a person with physical disabilities encountering architectural barrier(s) as stated herein and being denied access, all to his/her damages as prayed hereinafter in an amount within the jurisdiction of this court. No claim is being made for mental and emotional distress over and above that is usually associated with the encountering of architectural barriers and legally resulting in adverse experiences. No expert testimony regarding this usual mental and emotional distress will be presented at trial in support of the claim for damages.

88. Plaintiff is entitled to the rights and remedies of §52(a) of the Civil Code,

including trebling of actual damages (defined by §52(h) of the Civil Code to mean “special and general damages”), as well as to reasonable attorneys’ fees and costs, as is allowed by statute, according to proof if deemed to be the prevailing party.

PRAYER:

Plaintiff prays that this court award damages and provide relief as follows:

I. PRAYER FOR FIRST CAUSE OF ACTION FOR DENIAL OF ACCESS BY A PUBLIC ACCOMMODATION IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990 (42 U.S.C. §1 2101, *et seq.*)
(On Behalf of Plaintiff BYRON CHAPMAN, and Against Defendants Jerry Van Wingerden; Beverly Van Wingerden, inclusive)
(42 U.S.C. §12101, *et seq.*)

1. For injunctive relief, compelling defendants Jerry Van Wingerden; Beverly Van Wingerden, inclusive, to make the Giovanni’s Pizza, located at 5003 Carpinteria, Carpinteria, California, readily accessible to and usable by individuals with disabilities, per 42 U.S.C §12181, *et seq.*, and to make reasonable modifications in policies, practice, eligibility criteria and procedures so as to afford full access to the goods, services, facilities, privileges, advantages and accommodations being offered;

2. For attorneys’ fees, litigation expenses and costs of suit, if plaintiff is deemed the prevailing party; and

3. For such other and further relief as the court may deem proper.

II. PRAYER FOR SECOND CAUSE OF ACTION FOR DENIAL OF FULL AND EQUAL ACCESS IN VIOLATION OF CALIFORNIA CIVIL CODE §§54, 54.1 AND 54.3, *ET SEQ.*
(On Behalf of Plaintiff BYRON CHAPMAN, and Against Defendants Jerry Van Wingerden; Beverly Van Wingerden, inclusive)
(California Civil Code §§54, 54.1, 54.3, *et seq.*)

1. For injunctive relief, compelling defendants Jerry Van Wingerden; Beverly Van Wingerden, inclusive, to make the Giovanni’s Pizza, located at 5003 Carpinteria, Carpinteria, California, readily accessible to and usable by individuals with disabilities, per state law.

2. Statutory damages as afforded by Civil Code §54.3 for the date of incident and for each occasion on which plaintiff was deterred from returning to the subject public

1 accommodation;

2 3. Attorneys' fees pursuant to Civil Code §54.3 and Code of Civil Procedure
3 §1021.5, if plaintiffs are deemed the prevailing party;

4 4. Treble damages pursuant to Civil Code §54.3;

5 5. General damages according to proof;

6 6. For all costs of suit;

7 7. Prejudgment interest pursuant to Civil Code §3291; and

8 8. Such other and further relief as the court may deem just and proper.

9 **III. PRAYER FOR THIRD CAUSE OF ACTION FOR DENIAL OF ACCESSIBLE
10 SANITARY FACILITIES IN VIOLATION OF HEALTH & SAFETY CODE
§19955, ET. SEQ.**

11 (On Behalf of Plaintiff BYRON CHAPMAN, and Against Defendants Jerry Van
12 Wingerden; Beverly Van Wingerden, inclusive)
(Health & Safety code §19955, *et seq.*)

13 1. For injunctive relief, compelling defendants Jerry Van Wingerden; Beverly
14 Van Wingerden, inclusive, to make the Giovanni's Pizza, located at 5003 Carpinteria,
15 Carpinteria, California, readily accessible to and usable by individuals with disabilities, per
16 state law;

17 2. For attorneys' fees pursuant to Code of Civil Procedure §1021.5, and/or,
18 alternatively, Health & Safety Code §19953, if plaintiff is deemed the prevailing party;

19 3. For all costs of suit;

20 4. For prejudgment interest pursuant to Civil Code §3291;

21 5. Such other and further relief as the court may deem just and proper.

22 **IV. PRAYER FOR FOURTH CAUSE OF ACTION FOR DENIAL OF ACCESS
23 TO FULL AND EQUAL ACCOMMODATIONS, ADVANTAGES,
24 FACILITIES, PRIVILEGES AND/OR SERVICES IN VIOLATION OF
CALIFORNIA CIVIL CODE §51, ET SEQ. (THE UNRUH CIVIL RIGHTS
ACT)**

25 (On Behalf of Plaintiff BYRON CHAPMAN, and Against Defendants Jerry Van
26 Wingerden; Beverly Van Wingerden, inclusive)
(California Civil Code §§51, 51.5, *et seq.*)

27 1. For injunctive relief, compelling defendants Jerry Van Wingerden; Beverly
28 Van Wingerden, inclusive, to make the Giovanni's Pizza, located at 5003 Carpinteria,

1 Carpinteria, California, readily accessible to and usable by individuals with disabilities, per
2 state law;

3 2. All statutory damages as afforded by Civil Code §52(a) for the date of incident
4 and for each occasion on which plaintiff was deterred from returning to the subject public
5 accommodation;

6 3. Attorneys' fees pursuant to Civil Code §52(a), if plaintiff is deemed the
7 prevailing party;

8 4. General damages according to proof;

9 5. Treble damages pursuant to Civil Code §52(a);

10 6. For all costs of suit;

11 7. Prejudgment interest pursuant to Civil Code §3291; and

12 8. Such other and further relief as the court may deem just and proper.

13
14 Dated: July 31, 2018

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

15
16
17 By: /s/ Thomas E. Frankovich
Thomas E. Frankovich
18 Attorney for Plaintiff Byron Chapman

19 **DEMAND FOR JURY TRIAL**

20 Plaintiff hereby demands a jury for all claims for which a jury is permitted.

21
22 Dated: July 31, , 2018

THOMAS E. FRANKOVICH,
A PROFESSIONAL LAW CORPORATION

23
24 By: /s/ Thomas E. Frankovich
Thomas E. Frankovich
25 Attorney for Plaintiff Byron Chapman
26
27
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